

**ASSEMBLY BILL**

**No. 1133**

**Introduced by Assembly Member Harman**

February 22, 2005

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An act to amend Section 2028.050 of the Code of Civil Procedure, and to amend Section 912 of the Evidence Code, relating to evidentiary privileges.

LEGISLATIVE COUNSEL'S DIGEST

AB 1133, as introduced, Harman. Evidentiary privileges.

(1) Under existing law, a party who objects to any written deposition question on the ground that it calls for information that is privileged or is protected work product shall serve a specific objection to that question on all parties entitled to notice of the deposition within 15 days or the objection is waived.

This bill would authorize the court, on motion, to relieve a party from this waiver on the court's determination that the party has subsequently served an objection and that the party's failure to serve a timely objection was the result of mistake, inadvertence, or excusable neglect.

(2) Under existing law, the right of any person to claim certain evidentiary privileges is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure.

This bill would provide that the right of any person to claim these evidentiary privileges is waived with respect to a communication protected by the privilege if any holder of the privilege, without

coercion, has intentionally disclosed a significant part of the communication or has consented to disclosure made by anyone. The bill would further provide that consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating intent to permit the disclosure. The bill would authorize the court, when the holder of the privilege waives the privilege as to a significant part of a confidential communication, to order disclosure of another part of the communication or a related communication to the extent necessary to prevent unfairness from partial disclosure.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2028.050 of the Code of Civil  
2 Procedure is amended to read:

3 2028.050. (a) A party who objects to any question on the  
4 ground that it calls for information that is privileged or is  
5 protected work product under Chapter 4 (commencing with  
6 Section 2018.010) shall serve a specific objection to that question  
7 on all parties entitled to notice of the deposition within 15 days  
8 after service of the question. A party who fails to timely serve  
9 that objection waives it. *The court, on motion, may relieve a*  
10 *party from a waiver under this subdivision on the court's*  
11 *determination that the party has subsequently served an*  
12 *objection in substantial compliance with this subdivision and that*  
13 *the party's failure to serve a timely objection was the result of*  
14 *mistake, inadvertence, or excusable neglect.*

15 (b) The party propounding any question to which an objection  
16 is made on ~~those~~ *grounds of privilege or work product* may then  
17 move the court for an order overruling that objection. This  
18 motion shall be accompanied by a meet and confer declaration  
19 under Section 2016.040. The deposition officer shall not  
20 propound to the deponent any question to which a written  
21 objection on those grounds has been served unless the court has  
22 overruled that objection.

23 (c) The court shall impose a monetary sanction under Chapter  
24 7 (commencing with Section 2023.010) against any party,  
25 person, or attorney who unsuccessfully makes or opposes a  
26 motion to overrule an objection, unless it finds that the one

1 subject to the sanction acted with substantial justification or that  
2 other circumstances make the imposition of the sanction unjust.

3 SEC. 2. Section 912 of the Evidence Code is amended to  
4 read:

5 912. (a) Except as otherwise provided in this section, the  
6 right of any person to claim a privilege provided by Section 954  
7 (lawyer-client privilege), 980 (privilege for confidential marital  
8 communications), 994 (physician-patient privilege), 1014  
9 (psychotherapist-patient privilege), 1033 (privilege of penitent),  
10 1034 (privilege of ~~clergyman~~ *clergy member*), 1035.8 (sexual  
11 assault counselor-victim privilege), or 1037.5 (domestic violence  
12 counselor-victim privilege) is waived with respect to a  
13 communication protected by the privilege if any holder of the  
14 privilege, without coercion, has *intentionally* disclosed a  
15 significant part of the communication or has consented to  
16 disclosure made by anyone. Consent to disclosure is manifested  
17 by any statement or other conduct of the holder of the privilege  
18 indicating ~~consent to intent to permit~~ the disclosure, including  
19 failure to claim the privilege in any proceeding in which the  
20 holder has the legal standing and opportunity to claim the  
21 privilege.

22 (b) Where two or more persons are joint holders of a privilege  
23 provided by Section 954 (lawyer-client privilege), 994  
24 (physician-patient privilege), 1014 (psychotherapist-patient  
25 privilege), 1035.8 (sexual assault counselor-victim privilege), or  
26 1037.5 (domestic violence counselor-victim privilege), a waiver  
27 of the right of a particular joint holder of the privilege to claim  
28 the privilege does not affect the right of another joint holder to  
29 claim the privilege. In the case of the privilege provided by  
30 Section 980 (privilege for confidential marital communications),  
31 a waiver of the right of one spouse to claim the privilege does not  
32 affect the right of the other spouse to claim the privilege.

33 (c) A disclosure that is itself privileged is not a waiver of any  
34 privilege.

35 (d) A disclosure in confidence of a communication that is  
36 protected by a privilege provided by Section 954 (lawyer-client  
37 privilege), 994 (physician-patient privilege), 1014  
38 (psychotherapist-patient privilege), 1035.8 (sexual assault  
39 counselor-victim privilege), or 1037.5 (domestic violence  
40 counselor-victim privilege), when disclosure is reasonably

1 necessary for the accomplishment of the purpose for which the  
2 lawyer, physician, psychotherapist, sexual assault counselor, or  
3 domestic violence counselor was consulted, is not a waiver of the  
4 privilege.

5 *(e) If the holder of a privilege waives the privilege as to a*  
6 *significant part of a confidential communication pursuant to*  
7 *subdivision (a), the court may order disclosure of another part of*  
8 *the communication or a related communication to the extent*  
9 *necessary to prevent unfairness from partial disclosure.*

10 *(f) This section applies only to the privileges identified in*  
11 *subdivision (a). It implies nothing regarding waiver of any other*  
12 *privilege.*